

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5417 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MUNNA ALIAS UMDESHKUMAR BHAGWANDAS AGRAWAL
Versus
COMMISSIONER OF POLICE SURAT

Appearance:

MR SATISH R PATEL for Petitioner
MR AJ DESAI AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE C.K.BUCH
Date of decision: 24/01/2000

ORAL JUDGEMENT

#. Heard Ms.Banna Datta, learned advocate for
Mr.S.R.Patel, learned advocate for the petitioner and
Mr.A.J.Desai, learned AGP appearing for respondents No.
1, 2 & 3.

#. The detention order dated 4-5-1999 passed by respondent No.1 - The Commissioner of Police, Surat against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 ('PASA' for short') is challenged by way of this present petition under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-C interalia indicates that two prohibition cases are registered against the petitioner by the striking force, Surat on 28-8-98 and 13-1-99 respectively. That in each case, Indian made foreign liquor was seized from the possession of the petitioner / detenu. That both the cases are pending for trial. However, the petitioner was released on bail and in the second case, registered on 13-1-1999, he has been released on bail since 18-1-1999.

#. Over and above that two witnesses on assurance of anonymity have given statements on 20-4-1999 and 23-4-1999 regarding the bootlegging activities of the petitioner, wherein, they have referred to alleged incidents of 7th March, 1999 and 13th March, 1999 respectively. That on the basis of the said material, the respondent No.1 - The Commissioner of Police, Surat as the detaining authority has come to the conclusion that the petitioner / detenu is bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his anti social activities, detention order is necessary and hence the impugned order is passed.

#. It has been submitted on behalf of the petitioner at bar that on account of unexplained inordinate delay in passing the impugned order from the date of registration of last offence which is the basis of the order, the subjective satisfaction of the detaining authority was vitiated and has rendered the order invalid.

#. In the instant case, on scrutiny of papers, it appears the last case was registered against the petitioner on 13-1-1999 and the petitioner was released on bail 18-1-1999. That thereafter, statement of witnesses have been recorded which related to the incident of 7th March, 1999 and 13th March, 1999 respectively. However, the detaining authority has passed the impugned order on 4-5-1999. That the grounds of detention is devoid of any explanation much less a

reasonable explanation in respect to said inordinate delay in passing the impugned order.

#. In the matter of PRADEEP NILKANTH PATURKER VS. STATE OF MAHARASTHRA reported in AIR 1994 SC 656, the Hon'ble Supreme Court has observed that delay in taking action under detention law is fatal to the validity of the detention order. Even this Court also in the matter of ELESH PATEL VS. THE COMMISSIONER OF POLICE, AHMEDABAD reported in 1997 (1) GLH 381 has also followed the said proposition by referring the various authorities of Hon'ble Supreme Court and has held that in the absence of reasonable explanation for delayed action, the detention order cannot be sustained.

#. In the instant case also, as discussed hereinabove, the detaining authority having failed to explain the delay in taking the impugned action either in the grounds of detention or in contemporaneous record or by filing affidavit, it is difficult to sustain the same.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

##. On the basis of the foregoing discussion, the petition is allowed. The detention order dated 4-5-1999 passed by respondent No. 1 - The Commissioner of Police, Surat against the petitioner is hereby quashed and set aside. The petitioner - Munna alias Umeshkumar Bhgwandas Agrawal is ordered to be set at liberty forthwith, if not required in any other case. Rule to that extent is made absolute.

Date : 24-1-2000 [A.K.Trivedi, J.]

#kailash#